CITATION: RBC v. HI & DQ's Foods Inc.2025 ONSC 2774
COURT FILE NO.: CV-23-00003564-0000
DATE: 2025-05-06

2025 ONSC 2774 (CanLII)

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Royal Bank of Canada, Plaintiff

AND:

HI & DQ's Foods Incorporated and Nagina Wahab, Defendants

BEFORE: Kurz J.

COUNSEL: Spencer Jones, for the Plaintiff

No one appeared for the Defendants even though paged at 10:35 A.M.

HEARD: April 29, 2025, in-person

ENDORSEMENT

Introduction

[1] This is a motion by the Plaintiff Bank ("RBC") for summary judgment against the individual Defendant, Nagina Wahab ("Wahab") on a guarantee which Wahab signed on May 24, 2024 (the "Guarantee"). At the time she signed the Guarantee, Wahab was the sole officer and director of the Defendant corporation, ("HI&DQ"), which is now bankrupt. HI&DQ was dissolved for noncompliance with reporting requirements on November 28, 2023.

[2] The Guarantee calls for Wahab to be liable for the debts of HI&DQ to RBC under a credit agreement dated May 11, 2022, up to a maximum of $300,000. It also calls for interest from the date of demand at RBC's prime rate plus 5%. As of December 2, 2024 HI&DQ was indebted to RBC for the total amount of $1,135,466.36. No funds have been paid to RBC by HI&DQ since that date. Thus, subject to any defences raised by Wahab, she would be liable to RBC for $300,000 plus interest from the date of demand, November 2, 2023.

2025 ONSC 2774 (CanLII)

Law Regarding Summary Judgment

[3] This motion is brought under Rule. 20.01 of the *Rules of Civil Procedure*. The terms of Rule 20.04(2) are mandatory: "[t]he court **shall** grant summary judgment if, (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence..." [emphasis added]. See also: *Hryniak v. Mauldin,* 2014 SCC 7, [2014] 1 S.C.R. 87 ("*Hryniak*"), at para. 68 and *Mega International Commercial Bank (Canada) v. Yung,* 2018 ONCA 429, 141 O.R. (3d) 81 ("*Mega International*"), at para. 83.

[4] There will be no genuine issue requiring a trial if the summary judgment process allows the court to reach a fair and just determination on the merits on a motion for summary judgment. That will be the case when the process: (1) provides the court with the evidence required to fairly and justly adjudicate the dispute by making the necessary findings of fact, (2) allows the judge to apply the law to those facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result (see *Hryniak*, at paras. 49 and 66).

[5] Each party to a motion for summary judgment has an obligation to "...'put its best foot forward' with respect to the existence or non-existence of material issues to be tried" (*Ramdial v. Davis (Litigation Guardian of)*, 2015 ONCA 726, 341 O.A.C. 78, at para. 27, citing *Papaschase Indian Band No. 136 v. Canada (A.G.)*, 2008 SCC 14, [2008] 1 S.C.R. 372, at para. 11).

[6] The onus for proving that there is no genuine issue requiring a trial rests with the moving party. However, in response to the evidence of the moving party, the responding party may not rest on mere allegations or denials in the party's pleadings. That party must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial. A self-serving affidavit is not sufficient itself to create a genuine issue requiring a trial in the absence of detailed facts and supporting evidence (see Rule 20.02(2) and *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, at para. 31).

[7] In the oft-repeated maxim of Justice Coulter Osborne of the Ontario Court of Appeal, the responding party to a motion for summary judgment must "lead trump or risk losing": *106150 Ontario Ltd. v. Ontario Jockey Club*, [1995] O.J. No. 132 (Ont. C.A.), at para. 35. The principle was reaffirmed in *Ramdial*, at para. 28.

[8] The court is entitled to assume that the record before it is complete and that it contains all of the evidence that a party would present if there were a trial: *Broadgrain Commodities Inc. v. Continental Casualty Company (CNA Canada*), 2018 ONCA 438, 80 C.C.L.I. (5th) 23 ("*Broadgrain Commodities Inc.*"), at para. 7, citing *Dawson v. Rexcraft Storage & Warehouse Inc.* (1998), 111 O.A.C. 201 (C.A.), at para. 17; *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200, at paras. 27, 33-34, aff'd 2014 ONCA 878, leave to appeal to S.C.C. refused, [2015] S.C.C.A. No. 97; and *Tim Ludwig Professional Corporation v. BDO Canada LLP*, 2017 ONCA 292, 137 O.R. (3d) 570, at para. 54.

[9] Once the moving party discharges the burden of showing that there is no genuine issue for trial, the onus shifts to the responding party. That party must then provide evidence of specific facts showing that there is a genuine issue requiring a trial: *Ramdial*, at para. 30. An adverse inference may be drawn from a failure to support the allegations or denials in a party's pleadings: *Pearson v. Poulin*, 2016 ONSC 3707, at para. 40.

[10] Under Rule 20.04(2.1) the court may exercise enhanced powers on the motion in order to determine the presence or absence of a genuine issue requiring a trial, unless it is in the interests of justice to do so at trial. Those enhanced powers allow the court to weigh the evidence, evaluate the credibility of a deponent, and draw any reasonable inference from the evidence. As Paciocco J.A. wrote for the Court of Appeal for Ontario at para. 83 of *Mega International*, those powers "...are presumptively available to a summary judgment motion judge to use to fairly and justly adjudicate a claim at a motion for summary judgment: *Hryniak*, at para. 45".

[11] Nonetheless, the court is not required to resort to those powers to make up for a party's evidentiary shortcomings (see *Broadgrain Commodities Inc.*, at para. 7).

Defences Raised by Wahab

2025 ONSC 2774 (CanLII)

[12] While she failed to attend court on the date of the motion and further failed to file a factum, Wahab filed an affidavit in response to this motion which raises the four following defences:

a. HI&DQ was really controlled by an individual named Junaid Mujtaba Rizvi ("Junaid"). Wahab was, as she pleaded in her statement of defence, a "sleeping partner". As such, she "acted solely under Junaid's direction" She claimed that she never even knew that she was a director of HI&DQ;

b. She lacked independent legal advice before signing the Guarantee;

c. As she swore in her affidavit, she "cannot speak, read or write English language. I have never learned to sign in English".

d. It was RBC's obligation to ensure that she understood what she was signing and its import.

Allegation of Junaid's Control

[13] The problem with Wahab's first allegation is that she offers no evidence of Junaid's involvement with HI&DQ or her non-involvement with that corporation other than her bald assertion. That assertion is undermined by the facts that she:

a. was the one who dealt with both RBC and its lawyers in regard to HI&DQ. She did so in writing and in English. She wrote and responded to numerous English language emails to and from RBC;

b. told RBC that she was working with her accountants to provide financial documentation which RBC had requested;

c. never attempted to add Junaid as a third party to this action despite the fact that her statement of defence was prepared by legal counsel.

2025 ONSC 2774 (CanLII)

2025 ONSC 2774 (CanLII)

Lack of Independent Legal Advice

[14] Independent legal advice is not required when a guarantor is an officer and director of the corporation receiving the loan funds. The guarantor is seen as receiving either a direct or indirect benefit from the loan. Further, a bank is not in a fiduciary relationship with a borrower. Their relationship is one of debtor/creditor: *Meridian Credit Union Ltd. v. 2428128 Ontario Ltd.* 2017 ONSC 4578, at para. 23, citing *Toronto-Dominion Bank v. 1503345 Ontario Ltd.*, [2006] O.J. No. 1960, 148 A.C.W.S. (3d) 457, at para. 22.

Non Est Factum

[15] The test for the defence of *non est factum* was set out by the Supreme Court of Canada in *Marvco Colour Research Ltd. v. Harris*, 1982 Canlii 63 (SCC), [1982], 2 S.C.R. 774. There must be:

a. a misrepresentation,

b. which leads to the signer of a document signing it while mistaken as to its nature and character, but

c. not careless in doing so.

[16] Here, Wahab cannot point to any misrepresentation by RBC regarding the Guarantee. Rather, she claims to be unable to “speak, read or write English language”. That claim is undermined by the facts that:

a. Her responding affidavit is in English. There is no indication in the affidavit that it was translated for her.

b. As set out above, Wahab communicated a number of times, in writing, in English, with RBC.

c. Wahab signed the necessary documentation for Hi&DQ to make an assignment in bankruptcy.

d. The self-represented Wahab failed to attend at court for this motion, where she would have been in a position to demonstrate her facility or lack of facility in the English language.

2025 ONSC 2774 (CanLII)

RBC's Obligations to Wahab

[17] Wahab deposed that RBC failed to confirm that she was acting independently as a guarantor, on her own accord and without undue influence. She adds that RBC further failed to make her "aware of the important difference between [her roles as authorized representative of HI&DQ and guarantor] …within the same transaction".

[18] I reject that argument. RBC did not fail in any duties towards Wahab. A bank is not in a fiduciary relationship with a borrower. As Maddalena J. wrote in *Meridian Credit*, above, at paras. 25-26:

> **25** Furthermore, a bank is in a creditor/debtor relationship with its borrower. Thus the ordinary relation of lender/borrower does not give rise to any fiduciary duty on the part of the lender towards the borrower.
>
> **26** Pertaining to the aforementioned, in the case of the *Bank of Montreal v. 1480863 Ontario Inc.*, 2007 CanLII 13359 at paras. 37 and 38, the court referenced *Baldwin v. Daubney* in para. 15 therein and stated as follows:
>
>> ...It is well established that absent special circumstances the relationship between a bank and its customer is that of debtor and creditor...More recently in September 2006, the Court of Appeal reaffirmed the above principle in *Baldwin v. Daubney*, 83 O.R. (3d) 308... Generally speaking, the relationship between a financial institution lender and its customer borrower is a purely commercial relationship of creditor and debtor. Absent any special relationship or exceptional circumstances such as would give rise to a fiduciary duty (which is not pleaded...) the courts have consistently held that the lender owes no duty to the borrower in connection with the making of the loan. In particular, the bank owes no duty to its customer to advise the customer not to undertake the loan.

Conclusion

[19] For all of the reasons set out above, I find that there is no genuine issue which requires a trial. I am able to determine the issues raised in this action within the bounds of this motion for summary judgment. Thus, I grant summary judgment to RBC against Wahab for:

a. $300,000;

b. Pre and Post-judgment interest at RBC's prime rate plus 5%, with pre-judgment interest commencing on November 2, 2023;

c. Costs, fixed at $15,000, an amount which I find to be fair, reasonable, and proportional, even within the costs terms of the Guarantee.

Justice Marvin Kurz

Date: May 6, 2025

2025 ONSC 2774 (CanLII)